

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

BRUCE TERRELL DAVIS,

Plaintiff,

v.

Case No. 13C0628

JAMES M. HERNANDEZ, and
MICHAEL S. MURPHY,

Defendants.

ANSWER, AFFIRMATIVE DEFENSES AND JURY DEMAND OF DEFENDANTS

NOW COME Defendants James M. Hernandez and Michael S. Murphy, by their attorney, Grant F. Langley, City Attorney, by Robin A. Pederson, Assistant City Attorney, and as and for their Answer to Plaintiff's Complaint, admit, deny, allege and state to the Court as follows:

ANSWER

I. Place of Present Confinement

1. Answering § I(A), Defendants lack information and knowledge necessary to form a belief as to the truth or falsity of the allegations contained therein.

2. Answering § I(B), Defendants lack information and knowledge necessary to form a belief as to the truth or falsity of the allegations contained therein.

II. Parties

3. Answering § II(A), Defendants lack information and knowledge necessary to form a belief as to the truth or falsity of the allegations contained therein.

4. Answering § II(B), Defendants lack information and knowledge necessary to form a belief as to the truth or falsity of the allegations contained therein.

5. Answering § II(C), Defendants lack information and knowledge necessary to form a belief as to the truth or falsity of the allegations contained therein.

6. Answering § II(D), Defendants lack information and knowledge necessary to form a belief as to the truth or falsity of the allegations contained therein.

7. Answering § II(E), Defendant James M. Hernandez admits he is a named defendant and his business address.

8. Answering § II(F), Defendant Michael S. Murphy admits he is a named defendant and his business address; Defendants do not respond to that portion referencing the City of Milwaukee Police Department as it does not apply to them.

III. Previous Lawsuits

9. Answering § III(A), Defendants lack information and knowledge necessary to form a belief as to the truth or falsity of the allegations contained therein.

10. Answering § III(B), Defendants lack information and knowledge necessary to form a belief as to the truth or falsity of the allegations contained therein.

11. Answering § III(C), Defendants lack information and knowledge necessary to form a belief as to the truth or falsity of the allegations contained therein.

IV. Statement of Claim

12. Answering § IV(A), unnumbered sentence 1, admit.

13. Answering § IV(A), unnumbered sentence 2, deny; aver that Officer Hernandez approached Plaintiff, asked him what he was doing, and eventually asked him to have a seat on

the porch; aver that neither Defendant officer ever drew their sidearm in their interactions with Plaintiff of the day at issue.

14. Answering § IV(A), unnumbered sentence 3, admit.

15. Answering § IV(A), unnumbered sentence 4, admit that Plaintiff was eventually placed in handcuffs; deny that Plaintiff was placed on the ground, or that Officer Hernandez placed his foot in Plaintiff's back.

16. Answering § IV(A), unnumbered sentence 5, admit.

17. Answering § IV(A), unnumbered sentence 6, admit.

18. Answering § IV(A), unnumbered sentence 7, admit, but deny that Officer Murphy "requested" a probation hold on Plaintiff; aver that the agent advised Officer Murphy that she was placing a probation hold on Plaintiff.

19. Answering § IV(A), unnumbered sentence 8, admit.

20. Answering § IV(A), unnumbered sentence 9, Defendants lack information and knowledge necessary to form a belief as to the truth or falsity of the allegations contained therein; assert that the averments do not apply to these Defendants.

21. Answering § IV(B), unnumbered sentence 1, assert that the averments call for legal conclusions, to which the answering Defendant need not respond further.

22. Answering § IV(B), unnumbered sentence 2, assert that the averments do not apply to these Defendants.

V. Relief you Request

23. Answering § V, Defendants deny Plaintiff is entitled to the relief requested.

AFFIRMATIVE DEFENSES

AS AND FOR AFFIRMATIVE DEFENSES, Defendant Officers Hernandez and Murphy allege and state to the Court as follows:

1. Plaintiff has failed to state a claim;
2. any individual named employee defendants of the City of Milwaukee are entitled to qualified immunity, and are therefore immune from liability to the plaintiff;
3. the actions of any City of Milwaukee employees or agents were discretionary or quasi-judicial or quasi-legislative in nature, and are therefore immune from liability, pursuant to Wis. Stat. § 893.80;
4. the amount of liability of the City of Milwaukee, if any, regarding state-law claims is limited pursuant Wis. Stat. § 893.80; and
5. the plaintiff failed to file the appropriate notice/claim document(s), and consistent with Wis. Stat. § 893.80, any state-law claims are therefore barred.

WHEREFORE, Defendant Officers Hernandez and Murphy demand judgment as follows:

1. dismissing the complaint of the plaintiff on its merits, together with costs and disbursements; and
2. for such other and further relief as the court may deem just and equitable.

JURY DEMAND

Defendant Officers Hernandez and Murphy demand a jury of twelve of all issues so triable.

Dated and signed at Milwaukee, Wisconsin 11 day of November, 2013.

GRANT F. LANGLEY
City Attorney

s/ Robin Pederson
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